

5101:3-3-54.5

16

Effective: 07/01/2004

R.C. 119.032 review dates: 04/15/2004 and 07/01/2009

CERTIFIED ELECTRONICALLY

Certification

06/21/2004

Date

Promulgated Under: 119.03
Statutory Authority: 5111.02, 5111.257
Rule Amplifies: 5111.01, 5111.02, 5111.20,
5111.257
Prior Effective Dates: 12/10/94, 7/1/02

TN #~~04-009~~ APPROVAL DATE AUG 21 2004
SUPERSEDES
TN #02-014 EFFECTIVE DATE 07/01/04

5101:3-3-87.1

Intermediate care facility for the mentally retarded (ICF-MR) outlier services for behavioral redirection and medical monitoring (BRMM).**(A) Purpose.**

This rule identifies a sub-population of those persons determined to require an ICF-MR level of care (LOC), whose care needs are not adequately measured by the individual assessment form (IAF) in effect on the effective date of this rule (as described in rule 5101:3-3-75 of the Administrative Code) or by the resident assessment classification (RAC) case mix system in effect on the effective date of this rule (as described in rule 5101:3-3-76 of the Administrative Code). This rule sets forth:

- (1) In paragraph (C) of this rule, the criteria to determine if a person with an ICF-MR level of care is eligible for outlier services for BRMM; and
- (2) In paragraph (D) of this rule, the conditions under which ICFs-MR or discrete units within an ICF-MR may be approved by the Ohio department of job and family services (ODJFS) as eligible providers of ICF-MR-BRMM services and thereby receive payment established in accordance with rule 5101:3-3-25 of the Administrative Code in lieu of payment established in accordance with rule 5101:3-3-78 of the Administrative Code; and
- (3) In paragraph (E) of this rule, the prior authorization process for admission or continued stay for individuals who are seeking medicaid payment for ICF-MR-BRMM services; and
- (4) In closing paragraphs of this rule, details about the provider agreement addendum, authorization for payment, and materials to be submitted by the provider for setting the initial and subsequent contracted provider per diem rate.

(B) Definitions:

- (1) "Behavioral phenotype" refers to the observable or measurable expression of a gene or genes and the heightened probability that people with a given syndrome will exhibit behavioral or developmental sequella relative to others without the syndrome.
- (2) "ICF-MR" means intermediate care facility for the mentally retarded. An "ICF-MR" is a long term care facility certified by the medical assistance program to provide services to individuals with mental retardation or a related condition who require active treatment as defined in rule 5101:3-3-07 of the

5101:3-3-87.1

2

Administrative Code. In order to be eligible for vendor payment in an ICF-MR, an individual must be assessed and determined by ODJFS to be in need of an ICF-MR LOC as outlined in rule 5101:3-3-07 of the Administrative Code.

- (3) "ICF-MR-BRMM" means an ICF-MR, approved by ODJFS to deliver outlier services for behavioral redirection and medical monitoring (BRMM), which holds an effective ICF-MR-BRMM provider agreement with ODJFS.
- (4) "Individual", for purposes of this rule, means any person who is seeking or receiving medicaid coverage of prior authorized ICF-MR-BRMM services.
- (5) "Individual plan (IP)" means a written description of the services to be provided to an individual, developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the individual's needs, as described by the comprehensive functional assessments.
- (6) "Level of care (LOC) review" is the evaluation of an individual's physical, mental and social/emotional status to determine the LOC required to meet the individual's service needs and includes activities necessary to safeguard against unnecessary utilization. LOC determinations are based upon the criteria regarding the amount and type of services needed by an individual that are set forth in rules contained in Chapter 5101:3-3 of the Administrative Code. The LOC process is also the mechanism by which medicaid vendor payment is initiated for non-outlier facilities. (For outlier facilities, individuals also require written preadmission or continued stay prior authorization approval from ODJFS before vendor payment can be initiated or continued for a time-specific duration.)
- (7) "ODJFS designated outlier coordinator" means a designated ODJFS staff member who coordinates the general operations of the long term care facility outlier program. This coordinator's duties include, but are not limited to, assisting with the initial approval and ongoing monitoring of outlier provider facilities, coordinating the processing of preadmission and continued stay prior authorization requests for individuals, representing ODJFS as a team member on the individual's interdisciplinary team, and reviewing assessments, individual plans, day programming plans, staffing plans, and other documents. This coordinator works actively with providers of outlier services, the individuals and their representatives requesting and receiving outlier services, other service agencies, and within ODJFS.
- (8) "Outlier services" are those clusters of services which have been determined by ODJFS to require staffing ratios, certain indirect costs, and capital

TN ~~#04-009~~ APPROVAL DATE AUG 24 2004
SUPERSEDES
TN ~~#02-04~~ EFFECTIVE DATE 07/01/04

5101:3-3-87.1

3

investments beyond the levels otherwise addressed in rules 5101:3-3-43 and 5101:3-3-78 of the Administrative Code when delivered by qualified providers to individuals who have been prior authorized for the receipt of a category of service identified as an outlier service by ODJFS and/or set forth as such in Chapter 5101:3-3 of the Administrative Code.

- (9) "Outlier prior authorization committee" means a committee organized and operated by ODJFS that makes outlier prior authorization determinations.
 - (10) "Physician" means a doctor of medicine or osteopathy who is licensed to practice medicine.
 - (11) "Plan of correction" means a corrective action plan prepared by a facility in response to deficiencies cited by the survey agency. The plan must conform to regulations and guidelines and include information that describes how the deficiency will be corrected, when it will be corrected, how other residents that may be affected by the deficiency will be identified, and how the facility will assure that compliance will be maintained upon correction.
 - (12) "Primary diagnosis" means a diagnosis not derived from any other source or cause, specifically the original condition or set of symptoms in disease processes.
 - (13) "Prior authorization assessment for ICF-MR-BRMM services" is an evaluation to determine if an individual meets the criteria to be served by an ICF-MR-BRMM provider as outlined in paragraphs (C)(3) to (C)(12) of this rule, and takes place only after the individual is determined to meet the financial eligibility and LOC requirements set forth in paragraphs (C)(1) and (C)(2) of this rule.
 - (14) "Prior authorization approval for ICF-MR-BRMM services" means approval obtained by the provider of ICF-MR-BRMM services from ODJFS on behalf of a specific individual for specific time-limited initial or continued stay periods at an ICF-MR which holds an effective ICF-MR-BRMM provider agreement. Prior authorization for ICF-MR-BRMM services is necessary for the provider to be authorized by ODJFS to receive reimbursement for services rendered to the individual, because payment rates for these services are determined through a contracted rate process in accordance with rule 5101:3-3-25 of the Administrative Code. Reimbursement may be denied for any service not rendered in accordance with the department's rules contained in Chapter 5101:3 of the Administrative Code.
- (a) Initial prior authorization for ICF-MR-BRMM services. Unless the

TN #01-009 APPROVAL DATE AUG 24 2004
 SUPERSEDES
 TN #02-014 EFFECTIVE DATE 07/01/04

5101:3-3-87.1

4

individual is seeking a change of payer, the prior authorization of payment for ICF-MR-BRMM services must occur prior to admission to the ICF-MR-BRMM.

- (b) Continued stay prior authorization for ICF-MR-BRMM services. In the case of requests for continued stay, the prior authorization of payment for ICF-MR-BRMM services must occur no later than the final day of the previously authorized ICF-MR-BRMM stay.
- (15) "Progressive serious medical condition" means an illness, injury, impairment or physical or mental condition or a combination of mental and physical conditions, that
 - (a) Continues over an extended period of time, and
 - (b) Involves a regimen of continuing treatment and/or periodic visits/monitoring of a physician, or by a nurse or physician's assistant under direct supervision of a physician, and
 - (c) Involves the characteristic signs and symptoms of the condition becoming more prominent by manifesting more frequently or increasing in severity as part of the course of the condition.
- (16) "QMRP" means qualified mental retardation professional, a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and is a doctor of medicine or osteopathy, a registered nurse, or an individual who holds at least a bachelor's degree in a professional category which meets the requirements outlined for facility staff under the medicare and medicaid programs.
- (17) "Repeat deficiency" means a deficiency cited on a licensure or certification survey, verified to have been corrected by a subsequent survey, and cited again on the next annual or complaint survey.
- (18) "Representative" means a person acting on behalf of an individual who is applying for or receiving medical assistance. A representative may be a family member, guardian, attorney, hospital social worker, ICF-MR social worker, or any other person chosen to act on the individual's behalf.
- (19) "Secondary medical condition" means any additional physical or mental health condition that occurs more frequently among people having a specific primary progressive serious medical condition.

ADG 24 2004
TN #04-009 APPROVAL DATE _____

SUPERSEDES

TN #02-014 EFFECTIVE DATE 07/01/04

5101:3-3-87.1

5

(C) Eligibility criteria for individuals.

To receive prior authorization approval for ICF-MR-BRMM services, the individual must meet all the following criteria.

(1) Financial eligibility.

The individual must have been determined by the county department of job and family services (CDJFS) to meet the medicaid financial eligibility standards for institutional care.

(2) ICF-MR level of care.

The individual must have received a LOC determination from ODJFS within the last thirty days that the person requires services at an ICF-MR, or at the time of prior authorization assessment for ICF-MR-BRMM services, be determined by ODJFS to meet the criteria for an ICF-MR LOC, as set forth in rule 5101:3-3-07 of the Administrative Code.

(3) Presence of developmental disability

The individual must have either a developmental disability other than mental retardation, or have a diagnosis of mental retardation and have been determined to function at the mild or moderate intellectual level in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American association on mental retardation.

(4) Presence of progressive serious medical condition.

The individual must have a primary "progressive serious medical condition" other than a mental or physical impairment solely caused by mental illness as defined in division (A) of section 5122.01 of the Revised Code and other than mental retardation, which is generally acknowledged to be associated with:

- (a) Behaviors posing a substantial risk of injury to self or others which cannot be eradicated by psychiatric, pharmacologic, neurologic, or behavioral intervention, or combination of interventions; and
- (b) Behaviors requiring a restrictive environment to maintain health and safety.

TN ~~#01-009~~ APPROVAL DATE AUG 24 2004
SUPERSEDES
TN ~~#02-04~~ EFFECTIVE DATE 07/01/04

5101:3-3-87.1

6

(5) Presence of secondary medical condition.

The individual must have at least one medical condition other than mental illness or mental retardation which is a secondary manifestation of the primary progressive serious medical condition listed in paragraph (C)(4) of this rule; and which, without intervention, would threaten the person's medical stability.

(6) Episode of injury to self or others and continuing risk of injury to self or others.

- (a) Within the twelve months preceding the initial prior authorization assessment for ICF-MR-BRMM services, the individual must have exhibited behavior which is generally acknowledged to be associated with one of the medical conditions from paragraph (C)(4) or (C)(5) of this rule that resulted in substantial injury to self or others.
- (b) Within the twelve months prior to any continued stay prior authorization assessment for ICF-MR-BRMM services, the individual must have exhibited behavior which is generally acknowledged to be associated with one of the medical conditions from paragraph (C)(4) or (C)(5) of this rule that poses substantial risk of injury to self or others.

(7) Presence of aberrant motivational behavioral profile.

Within the prior twelve months, the individual must have exhibited a consistent pattern of behaviors or frequent episodes which display the following behavioral profile:

- (a) Lacks impulse control, and
- (b) Exhibits purposeful, but dysfunctional, goal-directed behavior to obtain or avoid something; and
- (c) Makes manipulative threats of harm to self, others or property to obtain this goal; and
- (d) Has the physical capability to carry out the threats; and
- (e) Has a history of carrying out the threats and/or currently attempts to carry out the threats.

TN #04-009 APPROVAL DATE AUG 24 2024
SUPERSEDES
TN #02-014 EFFECTIVE DATE 07/01/24

5101:3-3-87.1

7

(8) Constant monitoring and continual behavioral intervention.

For individuals eligible to receive ICF-MR-BRMM services, reduction in health and safety risks are expected to result from external and continuously required intervention, not from any expected internal gains in insight or impulse control by the individual or elimination of risk through medical treatment of the medical conditions.

(a) The individual must exhibit behaviors generally acknowledged to be associated with the medical conditions described in paragraph (C)(4) or (C)(5) of this rule which are not expected to be eliminated through the implementation of psychiatric, neurologic or pharmacologic interventions, or combination of interventions, and thus present a continuing need for temporary control through behavioral intervention strategies, such as behavioral redirection.

(b) The individual must require constant staff attention during waking hours for redirection and intervention; and awake staff supervision twenty-four hours per day, seven days per week

(9) A substantially restrictive environment.

The individual must have at least one behavioral manifestation generally acknowledged to be associated with the primary medical condition listed in paragraph (C)(4) of this rule which requires a substantially restrictive environment to maintain health and safety by eliminating opportunities for the behavior to occur.

(10) Less restrictive settings ruled out.

The individual must not be able to have these behavioral and medical needs met in any setting less restrictive than an ICF-MR-BRMM.

(D) Provider eligibility:

In order to obtain an "ICF-MR-BRMM Provider Agreement" and thereby to qualify for enhanced payment for the provision of ICF-MR-BRMM services to individuals who have received prior authorization for admission or continued stay by ODJFS, the provider must meet all of the following requirements. Prior to enrollment as an ICF-MR-BRMM provider, and at regular intervals subsequent to that enrollment to be determined by ODJFS, ODJFS shall determine whether the qualifications are fulfilled, through review of documentation of appropriate policies and procedures, completion of on-site visits, and through other mechanisms as determined by

TN #04-009 APPROVAL DATE AUG 24 2004

SUPERSEDES

TN #02-014 EFFECTIVE DATE 07/01/04

5101:3-3-87.1

8

ODJFS staff to be appropriate.

(1) Certified ICF-MR and consent to ODJFS oversight.

The provider must be an Ohio medicaid-certified ICF-MR and agree to cooperate with the ODJFS oversight function for provision of ICF-MR-BRMM services.

(2) Contracted rates.

Based on materials submitted by the provider in accordance with paragraphs (H) and (I) of this rule and the methodology set forth in rule 5101:3-3-25 of the Administrative Code, ODJFS shall contract with the provider to set initial and subsequent rates. With the exception of any specific items that are direct billed in accordance with rule 5101:3-3-19 of the Administrative Code, the provider must agree to accept, as payment in full, the per diem rate established for ICF-MR-BRMM services in accordance with rule 5101:3-3-25 of the Administrative Code, and to make no additional charge to the individual, any member of the individual's family, or to any other source for covered ICF-MR-BRMM services.

(3) Dedicated facility or discrete unit of facility.

ICF-MR-BRMM services must be provided in either a discrete, distinctly identified unit of the ICF-MR dedicated to the provision of outlier services for persons requiring ICF-MR-BRMM services or in a freestanding ICF-MR. ~~(If the service is delivered in a distinctly identified unit of a larger ICF-MR, the provider's state licensure process and its medicaid certification process may continue to recognize only one facility, but the Ohio medical assistance program would issue separate provider agreements to the outlier and the non-outlier units).~~

(a) If the service is delivered in a distinctly identified unit of a larger ICF-MR, the provider's state licensure process and its medicaid certification process may continue to recognize only one facility, but the Ohio medical assistance program would issue separate provider agreements to the outlier and the non-outlier units.

(b) Unoccupied certified beds may be moved between the outlier and non-outlier units in accordance with the following:

(i) ODJFS must receive a written request from the operator of the ICF-MR at least five business days before the selected date of the bed change. The request should be mailed or faxed to "the Bureau

IN #04-009 APPROVAL DATE NOV 24 2004
SUPERSEDES
TN #02-014 EFFECTIVE DATE 07/01/04

of Long Term Care Facilities, 30 East Broad Street, Columbus, Ohio 43215-3414" to the attention of the facility contracting section. ODJFS will issue a written response either approving or denying the request.

(ii) Approvals will be granted for unoccupied bed moves only once per calendar quarter. At their sole discretion of the department, more than one bed movement during a calendar quarter may be authorized.

(iii) No ICF-MR shall discharge a resident earlier than is indicated in their treatment plan as a result of a request to move beds from the outlier unit to the non-outlier unit.

(iv) ICFs-MR must meet all requirements set forth in (D)(6) and (D)(7) of this rule for beds moved into the outlier unit from the non-outlier unit.

(4) Licensure survey findings.

Within the thirty-six months prior to acceptance by ODJFS as a provider of ICF-MR-BRMM services, the provider must have been in full compliance with residential facility licensure standards, or have an approved plan of corrections from the licensing agency, and have not demonstrated a pattern of repeat deficiencies. New facilities may not be approved as providers of ICF-MR -BRMM services until any required licensure plans of correction are implemented.

(5) Certification survey findings.

Within the thirty-six months prior to acceptance as a provider of ICF-MR-BRMM services, the provider must have fully met all the standards for medicaid ICF-MR certification, or have met the medicaid program requirements of a facility for which the survey and certification agency found deficiencies and have an approved plan of correction from the state survey and certification agency, and have not demonstrated a pattern of repeat deficiencies. Facilities may not be approved as providers of ICF-MR-BRMM services until any required certification plans of correction are implemented.

(6) Physical environment.

(a) Single person bedrooms.

Each resident shall have his or her own private bedroom.

TN #07-009 APPROVAL DATE AUG 23 2004
SUPERSEDES
TN #02-014 EFFECTIVE DATE 07/01/04

5101:3-3-87.1

10

(b) Environmental alterations.

Residents who qualify for prior authorization of ICF-MR-BRMM services are aggressive, assaultive, and/or destructive, and pose significant health or security risks. Based on the expected care needs of those residents prior authorized by ODJFS to receive ICF-MR-BRMM services, including residents whose records document that programs incorporating the use of less restrictive environments have been tried systematically and demonstrated to be ineffective, the provider must make significant environmental alterations that are expected to reduce or eliminate the destructive outcome to people or the environment, or to reduce the need for continual replacement of damaged property. Examples of such resident-specific adaptations or modifications may include, but are not limited to, fenced yards, alarm systems, reduced access to kitchens and food supplies, or furnishings that are more difficult to destroy.

(c) Structural modifications.

The provider must demonstrate the ability to rapidly respond to presented needs for structural changes related to the residents' behaviors.

(7) Facility staffing.

(a) Availability of direct care staff.

Providers must schedule direct care staff to assure that adequately trained staff are present and on duty, seven days a week, twenty-four hours a day, and three hundred sixty-five days a year, sufficient to assure that urgent, emergent, and routine resident needs are timely and appropriately identified and met through the implementation of intervention strategies reflected in the resident's IP. Absences of staff for breaks and meals must not compromise this requirement.

(b) Management/QMRP experience.

Staff employed to manage ICF-MR-BRMM services, including services delivered by a QMRP must have evidence of two year's work experience working with individuals with severe behavioral issues.

(c) Staff training.

TN #04-009 APPROVAL DATE AUG 24 2009

SUPERSEDES

TN #02-014 EFFECTIVE DATE 07/01/09